

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

YEHUDA IZMAGRISTO,  
Plaintiff(s),

v.

WELLS FARGO BANK, N.A.,  
Defendant(s).

Case No.: 2:18-cv-01530-RFB-NJK

**REPORT AND RECOMMENDATION**

This case was stayed by stipulation a year ago on September 19, 2018, so that the parties could arbitrate Plaintiff's claims. Docket No. 6. In support of that stipulation, the parties expressly represented that they "shall submit to binding non-judicial arbitration." Docket No. 4 at 1. Upon being ordered to provide a status report, on September 6, 2019, the parties advised that Plaintiff has not initiated arbitration in the intervening 12 months. Docket No. 12 at 2. As a result, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Docket No. 13. The Court ordered that a response must be filed by September 23, 2019. *Id.* Plaintiff has violated that order, as no response was filed.

Given the circumstances, there appears to be no need to continue staying this case pending arbitration as the parties have demonstrated no genuine desire to engage in arbitration. To wit, Plaintiff has left this case to lie fallow for a year without actually initiating arbitration as represented. Plaintiff's failure to actually submit to arbitration or to comply with the Court's order

1 to show cause are abusive litigation practices that have interfered with the Court's ability to  
2 manage its docket, delayed resolution of this case, wasted judicial resources, and threatened the  
3 integrity of the Court's orders and the orderly administration of justice. Sanctions less drastic than  
4 dismissal are unavailable because Plaintiff has willfully refused to initiate arbitration and willfully  
5 refused to respond to the Court's order to show cause even though it makes clear that dismissal  
6 could result.

7 Accordingly, the undersigned **RECOMMENDS** that this case be **DISMISSED**.

8 Dated: September 24, 2019

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Nancy J. Koppe  
United States Magistrate Judge

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12 **NOTICE**

13 This report and recommendation is submitted to the United States District Judge assigned  
14 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and  
15 recommendation must file a written objection supported by points and authorities within fourteen  
16 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file  
17 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951  
18 F.2d 1153, 1157 (9th Cir. 1991).